

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION.

PLANTATION SEED
CONDITIONERS, INC.,
FLORIDA AGRICULTURAL
EXPERIMENT STATION n/k/a
FLORIDA FOUNDATION
SEED PRODUCERS, INC., and
UNIVERSITY OF GEORGIA
RESEARCH FOUNDATION, INC.

Plaintiffs

v.

WILLIAM FUTCH, individually and
d/b/a KALINEAL FARMS, and
JOHN DOES 1-25

Defendants

CIVIL ACTION FILE
NO.: 4:09-cv-00154-HL

CONSENT INJUNCTION

IT IS HEREBY STIPULATED AND AGREED on this 27 day of
Aug, 2010 by and between Plaintiffs, Plantation Seed Conditioners, Inc.
(hereinafter referred to as "Plantation Seed"), Florida Agricultural Experiment Station
n/k/a Florida Foundation Seed Producers, Inc. (hereinafter referred to as "FFSP"), the
University of Georgia Research Foundation (hereinafter referred to as "UGARF"),
(collectively referred to as "Plaintiffs") and Defendant, William Futch, Individually and
d/b/a Kalineal Farms, (hereinafter referred to as "Kalineal and Futch "), all collectively

referred to as the "Parties," that:

- A. The Parties stipulate and agree that this Court is the proper court of venue and jurisdiction for the action alleged in Plaintiffs' *Complaint* and other pleadings pursuant to, *inter alia*, 28 U.S.C. §§ 1331, 1338, 1367, and 1391;
- B. The Parties have read and reviewed the stipulations and terms of this *Consent Injunction* and understand the nature, terms, and contents of this *Consent Injunction*;
- C. The undersigned representative for Plaintiffs certifies that he or she is fully authorized to enter into the terms and conditions of this *Consent Injunction* on behalf of Plaintiffs;
- D. Kalineal and Futch do not dispute that Plaintiffs own and license valid and enforceable intellectual property rights to the oat seed protected by virtue of various U.S. Plant Variety Protection Act Certificates, including those varieties known as Horizon 321, Horizon 474, Horizon 201, Horizon 270, Horizon LA 976, and Horizon 314;
- E. Kalineal and Futch recognize that a violation of Plaintiffs' intellectual property rights can create the following damages to Plaintiffs:
 - 1. Lost sales and profits;
 - 2. Investigation costs;
 - 3. Loss of goodwill;
 - 4. Marketplace confusion;
 - 5. Costs of electrophoresis and DNA testing;
 - 6. Attorney fees and court costs;
 - 7. Future monitoring and auditing.

6. Attorney fees and court costs;
7. Future monitoring and auditing.

F. Kalineal and Futch agree to the terms and conditions herein for the purposes of settlement of this case and consent to the entry of a final judgment and consent injunction. Accordingly, it is agreed by the parties that a final judgment should be entered in this cause adopting the following terms.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT this *Consent Injunction* shall be entered against Kalineal and Futch.

INJUNCTION

1. Prohibited Activities under the Plant Variety Protection Act.

Kalineal and Futch and all successors, assigns, officers, agents, employees, representatives, are hereby enjoined and permanently restrained as follows with regard to Plaintiffs' oat seed varieties protected by the Plant Variety Protection Act, and will not violate the Plant Variety Protection Act by commission of the following acts:

- a) Selling, offering for sale, exposing for sale, delivering, shipping, consigning, exchanging, soliciting an offer to buy, or making any other transfer of title or possession of such seed varieties for seed purposes (except seed of the varieties conditioned and packaged by or on behalf of Plaintiffs);
- b) Sexually multiplying such seed varieties as a step in marketing such varieties for seed purposes; and/or
- c) Instigating or actively inducing performance of any of the foregoing acts by others.

2. Disposition of Infringing Seed. Within one hundred-twenty (120) days of the entry of this *Consent Injunction*, Kalineal and Futch shall cause to be destroyed, or otherwise legally disposed of, any and all infringing seed under Kalineal

and Futch control.

3. **Award to Plaintiff.** Within fifteen (15) days of the entry of this Consent Injunction, fifteen thousand dollars (\$15,000.00) shall be paid to Plaintiffs by or on behalf of Kalineal and Futch.

4. **Costs.** All parties shall bear their own attorneys' fees and costs.


5. **Waiver of Trial.** The parties waive the right to trial and appeal of all existing rights, benefits, causes of action, and claims arising out of or relating to the subject matter forming the basis of Plaintiffs' *Complaint*.

IT IS ORDERED.

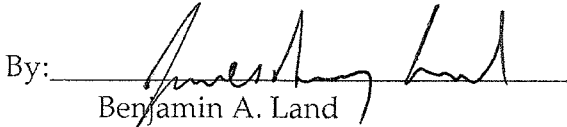

United States District Judge

Dated this 1 day of Sept 2010.

APPROVED AS TO CONTENT AND FORM:


William Futch, Individually and
d/b/a Kalineal Farms

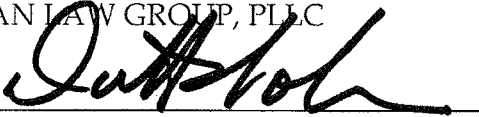
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